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NOTES

LIABILITY OF MANUFACTURER FOR INJURIES TO THIRD PERSON FROM DEFECTIVE MACHINERY.

The recent case of *Statler* v. *Ray*[1] (125, N. Y. App. Div. 69) is important as bringing defective machinery, in this case a boiler, within the exception to the rule exempting manufacturers from liability for injuries to third persons arising from defective articles.[2] The exception referred to has been said to exist in the case of articles "imminently dangerous to life or health."[3] There has, however, been an almost uniform

[1] The court also placed its decision on the ground that the boiler was dangerous to the public.

[2] *Huset* v. *J. I. Car Machin. Co.*, 120 Fed. 865.

[3] *Huset* v. *J. I. Car Machin. Co.* (*supra*), p. 870.

tendency to exclude machinery, and mechanical appliances and structures from the scope of this exception. Thus while courts have asserted the liability of manufacturers of drugs,[4] weapons[5] and food,[6] they have denied liability for injuries due to defects in the following cases—a hook holding a heavy weight in a drop press,[7] a porch,[8] a cylinder of a threshing machine which burst,[9] a hoisting rope of an elevator,[10] and a shelf designed as a platform for workingmen.[11] Indeed, in an earlier New York case,[12] which seems to have been ignored in both the majority and minority opinions in the recent case under discussion, injuries resulting from a defective boiler were held to impose no liability on the manufacturer.

The reason for this arbitrary exclusion of mechanical appliances and machinery from the category of articles "imminently dangerous to life or health" seems to rest upon a misconception of the case of *Wenterbottom* v. *Wright*,[13] which is assumed to have negatived the exitsence of any duty on the part of a manufacturer toward third persons, whereas in fact it merely held that no action in contract could be maintained by such third person against the manufacturer. Since that case involved a defect in a mechanical appliance, *i. e.*, a coach, subsequent courts, misunderstanding that decision, denied the manufacturer's liability in this class of cases, while recognizing a liability in instances, which though analogous in principle, were divergent in fact. Investigation seems to show that there existed at common law a principle which required every man to properly exercise his trade, and subjected him to liability to third persons who were injured by his failure to fulfill this duty. Consequently, the liability of a manufacturer of goods imminently dangerous to life or health, which is now consid-

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[4] *Thomas* v. *Winchester*, 6 N. Y. 397.

[5] *Dixon* v. *Bell*, 5 Maule & Sel. 198.

[6] *Bishop* v. *Weber*, 139 Mass. 411. But *contra*: *Tomlinson* v. *Armor Co.*, 65 Atl. 885.

[7] *McCaffrey* v. *Mfg. Co.*, 50 Atl. Rep. 651.

[8] *Curtin* v. *Somerset*, 140 Pa. 70.

[9] *Heize* v. *Kingsland, etc., Mfg. Co.*, 110 Mo. 605.

[10] *Barrett* v. *Mfg. Co.*, 31 Super. Ct. N. Y. 545.

[11] *Levan* v. *Jackson*, 55 Hun, 194.

[12] *Losee* v. *Clonte*, 51 N. Y. 494.

[13] 10 M. & W. 109.

ered an exception to a rule, is really merely a most obvious application of a common law doctrine.

No doubt the difficulty of applying the standard of "imminent danger to life or health" has contributed to the exclusion of manufactured articles from the operation of the exception under consideration. Many instances would plainly fall within the *ratio* of this exception, as for example, a high scaffold;[15] others would as clearly fall without, as a table; while still others would be difficult of classification, as a chair or shelf. It is submitted, however, that the interests of justice may be served without too great a sacrifice of judicial convenience if the following elements be requisite to the fixing of the manufacturer's liability in any given case: (1) That the article be one which if defective is imminently dangerous to life or health; (2) that there be shown a failure to use reasonable care in the manufacture or production of this article; (3) that it be an article with which the class of persons of whom the plaintiff is one will naturally come in contact; (4) and that the injury actually occurs while the article is put to the use for which it was designed. To these requirements might well perhaps be added another, (5) that the article be sold by the manufacturers as a sound and adequate article, thus relieving the manufacturer from liability for injuries arising from "cheap goods," and holding that in such case the act of the vendee in knowingly using such inferior article is the proximate cause of the injury.

The Evasion of a Covenant Running With the Land by Incorporation.

In the case of *People's Pleasure Park Co., Inc.* v. *Rohleder*, 61 S. W. 794, a bill was filed to enforce a covenant in a deed which covenant must be taken to be one that ran with the land, one which was not against public policy and one which was not an unreasonable restraint on alienation, though this last proposition might be doubtful as applied to this particular covenant and would make a very interesting subject for discussion, were opportunity afforded.

The facts show that in 1900 the then owner of this piece of land containing some hundred acres divided it into several

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[15] *Devlin* v. *Smith*, 89 N. Y. 470.